United Nations CRC/C/OPSC/LUX/CO/1

Convention on the Rights of the Child

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Committee on the Rights of the Child

# Concluding observations on the report submitted by Luxembourg under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*

1. The Committee considered the initial report of Luxembourg (CRC/C/OPSC/LUX/1) at its 2125th meeting (see CRC/C/SR.2125), held on 31 May 2016, and adopted the following concluding observations at its 2132nd meeting (see CRC/C/SR.2132), held on 3 June 2016.

## I. Introduction

2. The Committee appreciates the constructive dialogue held with the multisectoral State party delegation. The Committee welcomes the submission of the State party's initial report and its written replies to the list of issues (CRC/C/OPSC/LUX/Q/1/Add.1).

3. The Committee reminds the State party that the present concluding observations should be read in conjunction with the concluding observations on the combined third and fourth periodic reports submitted by the State party under the Convention (CRC/C/LUX/CO/3-4), adopted on 29 October 2013, and those on its initial report under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/LUX/CO/1), adopted on 5 October 2007.

## II. General observations

### Positive aspects

4. The Committee notes with appreciation the State party's ratification of:

(a) The Optional Protocol to the Convention on the Rights of the Child on a communications procedure, on 12 February 2016;

(b) The Council of Europe Convention on Cybercrime, in 2014;

* Adopted by the Committee at its seventy-second session (17 May-3 June 2016).

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(c) The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, in 2012;

(d) The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, in 2011;

(e) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime — the Protocol was ratified in 2009 while the Convention was ratified in 2008;

(f) The Council of Europe Convention on Action against Trafficking in Human Beings, in 2009.

5. The Committee welcomes the various measures taken by the State party in areas relevant to the implementation of the Optional Protocol, including the adoption of:

(a) Revisions to the Criminal Code, through the Act of 9 April 2014 on Strengthening the Rights of Victims of Human Trafficking;

(b) The Act of 21 February 2013 on Combating the Sexual Abuse and Sexual Exploitation of Children;

(c) The Act of 16 July 2011 on the Protection of Children from Sexual Exploitation and Sexual Abuse.

6. The Committee also welcomes the progress achieved in the creation of institutions and the adoption of national plans and programmes that facilitate the implementation of the Optional Protocol, including:

(a) An interministerial working group on the rights of the child, composed of all ministries with responsibilities relating to children;

(b) A working group to coordinate action to combat human trafficking;

(c) Strong collaboration with non-governmental organizations, including funding of activities for prevention, awareness-raising and support services;

(d) The possibility of granting residence permits to victims of human trafficking both on the grounds of their personal situations and when they cooperate with the authorities in criminal proceedings.

## III. Data

### Data collection

7. The Committee is concerned about the absence of a comprehensive system for data collection and disaggregated statistics covering all offences under the Optional Protocol, which limits the State party's capacity to monitor and assess offences under the Protocol.

**8. With reference to its concluding observations under the Convention (CRC/C/LUX/CO/3-4, paras. 18 and 19), the Committee recommends that the State party, as a matter of priority, intensify its efforts to develop and implement a comprehensive, coordinated and effective system for collecting data on all areas covered by the Optional Protocol, including on child prostitution, child pornography and child sex tourism, in order to ensure effective analysis and monitoring of the**

**situation of children as well as assessments of the impact of measures taken on the basis of disaggregated data.**

# IV. General measures of implementation

## Comprehensive policy and strategy

9. The Committee welcomes the National Plan of Action on Sexual and Emotional Health 2013-2016, which refers to preventing domestic violence and recourse to prostitution. Nevertheless, the Committee remains concerned that a comprehensive policy on children and a strategy for implementing the Convention (CRC/C/LUX/CO/3-4, para. 14), including, specifically, all the issues covered under the Optional Protocol, is still lacking.

10. **The Committee recommends that the State party develop a comprehensive policy on children and a strategy for implementing the Convention, including, specifically, all the issues covered under the Optional Protocol, and provide adequate human and financial resources for its implementation. In doing so, the State party should pay particular attention to the implementation of all the provisions of the Optional Protocol, taking into account the Declaration and Agenda for Action and the Global Commitment adopted at the first, second and third World Congress against Commercial Sexual Exploitation of Children.**

## Coordination and evaluation

11. The Committee welcomes the ongoing efforts by the State party to improve the coordination of protection for children at risk. It is concerned, however, that coordination efforts in this regard do not systematically involve all ministries and civil society partners.

12. **With reference to its previous concluding observations under the Convention (see CRC/C/LUX/CO/3-4, paras. 16 and 17), the Committee recommends that the State party continue strengthening the coordination among the various governmental bodies from all the ministries working on developing and implementing child rights policies, particularly those on the protection of children at risk.**

## Dissemination, awareness-raising and training

13. The Committee welcomes the establishment by the State party of mandatory training for schoolchildren on safer Internet use (the BEE Secure initiative) as well as mandatory training on the issue for teachers in the public education system. Nevertheless, the Committee is concerned about the limited concerted training efforts aimed at child protection professionals, including on the rights of the child in general, as well as specialized training for professionals likely to come into contact with victims of offences under the Optional Protocol.

14. **The Committee recommends that the State party:**

**(a) Strengthen its efforts to systematically make the provisions of the Optional Protocol known and to develop, in close cooperation with relevant government agencies, civil society organizations, the media, the private sector, families, communities and children, awareness-raising and educational programmes covering all issues dealt with in the Optional Protocol and on protection measures provided against such practices in domestic laws;**

**(b) Extend training to all relevant professionals working with and for children, especially judges, prosecutors, social workers, and law enforcement and immigration officials at all levels, and strengthen such training, ensuring that it is systematic and multidisciplinary, and that it includes all the areas covered by the Optional Protocol.**

### Allocation of resources

15. While welcoming the fact that the State party allocates resources to non-governmental organizations for the implementation of activities related to the Optional Protocol, including in developing countries, the Committee is concerned by the lack of clearly identifiable budget allocations and notes that no specific budgetary appropriations for the implementation of the Optional Protocol exist.

16. **The Committee recommends that the State party allocate sufficient and targeted resources for the effective implementation of the Optional Protocol. The Committee also encourages the State party in its current efforts to compile and publish public budgetary data coordinated by the National Children's Bureau and recommends that the State party include information related to steps taken in this area in its next periodic report under the Convention.**

## V. Prevention of the sale of children, child prostitution and child pornography (art. 9 (1) and (2))

### Measures adopted to prevent offences prohibited under the Protocol

17. While noting the efforts of the State party to prevent offences prohibited under the Protocol, the Committee is concerned that measures appear fragmented and do not cover all areas of the Protocol. In particular, the Committee is concerned about:

(a) The limited information on efforts to protect children in vulnerable and marginalized situations, including asylum-seeking and refugee children, unaccompanied children and undocumented children;

(b) Insufficient provision at existing care facilities for identifying children at risk of becoming victims of offences under the Optional Protocol, and for guaranteeing the protection of victims, especially children outside the family environment;

(c) The lack of a legal framework to ensure that Internet-hosting services registered in the State party speedily remove illegal child pornographic content.

18. **The Committee recommends that the State party increase its preventive measures to cover all areas of the Optional Protocol and in particular that it:**

**(a) Strengthen its efforts to ensure that prevention efforts also target children in vulnerable and marginalized situations, including asylum-seeking and refugee children, as well as children affected by migration situations;**

**(b) Establish specialized mechanisms and procedures for the identification of children at risk of becoming victims of the offences covered in the Optional Protocol, in particular among children in vulnerable situations, and strengthen prevention programmes and the protection of potential victims;**

**(c) Adopt legislative and other measures to ensure the prompt removal of child pornographic content and combat child pornography through other digital means such as peer-to-peer systems, newsgroups and e-mail.**

### Child sex tourism

19. The Committee welcomes the measures taken by the State party to address child sex tourism, including in partnership with civil society organizations, the tourism industry and the media, such as campaigns to raise awareness and prevent child sex tourism. However, the Committee is concerned about reports indicating the possible existence of cases of child sex tourism abroad and the lack of information on international cooperation for the prevention and elimination of child sex tourism.

20. **The Committee recommends that the State party continue to conduct advocacy concerning the harmful effects of child sex tourism, widely disseminate the World Tourism Organization Global Code of Ethics for Tourism among travel agents and tourism agencies, and encourage these enterprises to become signatories to the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism. It also recommends that the State party further strengthen its international cooperation through multilateral, regional and bilateral arrangements for the prevention and elimination of child sex tourism.**

## VI. Prohibition of the sale of children, child pornography and child prostitution and related matters (arts. 3, 4 (2) and (3) and 5-7)

### Existing criminal or penal laws and regulations

21. The Committee welcomes the amendments made to the Criminal Code, through the adoption of the Law of 9 April 2014 on Strengthening the Rights of Victims of Human Trafficking and introduction of a definition of the sale of children, to reflect the provisions of the Optional Protocol. However, the Committee is concerned that:

(a) The existing legal framework does not cover all the forms of the sale of children covered by article 3 (1) (a) (i) of the Optional Protocol and that they are not classified as offences distinct from human trafficking;

(b) The provision of the Criminal Code punishing online grooming only protects children up to the age of 16;

(c) A definition of child prostitution as found in article 2 (b) of the Optional Protocol is lacking in the existing legal framework.

22. **The Committee recommends that the State party:**

**(a) Define and criminalize the sale of children as defined in article 3 of the Protocol, a concept that is similar, but not identical, to trafficking in persons;**

**(b) Ensure that all children under the age of 18 are fully protected by the Criminal Code;**

**(c) Adopt a definition of child prostitution in accordance with article 2 (b) of the Optional Protocol.**

### Adoption

23. The Committee is concerned that, according to the State's party own evaluation, "inducing consent, as an intermediary, for the adoption of a child", does not appear to be regulated in accordance with the definition contained in article 2 of the Optional Protocol (CRC/C/OPSC/LUX/1, para. 75).

24. **The Committee recommends that the State party criminalize improperly inducing consent, as an intermediary, for the purpose of illegal adoption, in conformity with article 3 (1) (a) (ii) and article 5 of the Protocol.**

### Extradition

25. The Committee takes note of the information provided by the State party in its written replies to the list of issues (CRC/C/OPSC/LUX/Q/1/Add.1, paras. 47 and 48) that the amended Extradition Act of 20 June 2001 provides that the acts prohibited by the Optional Protocol give rise to extradition and that, in practice, extradition is mostly based on the European arrest warrant.

26. **The Committee recommends that the State party consider using, where necessary, the Optional Protocol as a legal basis for extradition in the absence of a bilateral extradition treaty.**

## VII. Protection of the rights of child victims (arts. 8 and 9 (3) and (4))

### Criminal justice system protection measures

27. The Committee is concerned that the State party still uses the bone test to obtain the child victim's precise age in cases where this is not known, and that the test may be performed by staff lacking specialized training in dealing with victims of offences under the Optional Protocol. It is also concerned that the State party has not made sufficient efforts regarding:

(a) The protection of child victims during criminal proceedings, as currently only one child-friendly interview room exists in the whole of the State party;

(b) The identification of child victims, which can only be done by the criminal investigation police, for whom training has not been systematic or comprehensive.

28. **The Committee recommends that the State party adopt all the necessary measures, including legislative ones, to ensure that every child who has become a victim of an offence under the Optional Protocol is given equal access to protective provisions and that the best interests of the child are always a primary consideration, in accordance with article 8 (3) of the Optional Protocol. It also recommends that the State party replace the bone method with more reliable methods of age determination, establish additional child-friendly interview rooms, and make it possible for other qualified players within the national child protection services, in addition to law enforcement officials, to carry out the identification of child victims.**

### Recovery and reintegration of victims

29. The Committee is concerned that specialized services and staff expertise as well as specialized care institutions for child victims are very limited, which results in ad hoc care for child victims in places that may not be fully adequate for supporting their recovery and reintegration needs. While welcoming the efforts by the State party to ensure that foreign child victims of trafficking are cared for by child protection agencies, the Committee is concerned by reports that language barriers constitute a problem.

30. **The Committee recommends that the State party take all necessary measures to ensure that child victims of the offences covered in the Optional Protocol are provided with appropriate assistance, including for their physical and psychological recovery and full social reintegration, inter alia by:**

(a) **Increasing in-country expertise to ensure that specialized services, adequate support and age-appropriate information are provided to child victims of crimes under the Optional Protocol in a language they understand;**

(b) **Taking the measures necessary to facilitate and increase access to appropriate accommodation for child victims of offences, particularly for children in the most vulnerable situations;**

(c) **Increasing legal and psychological training opportunities for all professional groups responsible for assisting child victims and likely to come into contact with child victims of any of the offences covered in the Optional Protocol.**

## VIII. International assistance and cooperation (art. 10)

### Multilateral, bilateral and regional agreements

31. The Committee welcomes the significant international cooperation extended by the State party on issues related to the Optional Protocol. It regrets, however, that a lack of clarification of the difference between trafficking in persons and offences under the Optional Protocol in the State party's national legislation impedes international consistency in the application of the Protocol.

32. **In the light of article 10 (1) of the Optional Protocol, the Committee encourages the State party to continue to strengthen international cooperation through multilateral, regional and bilateral arrangements, especially with neighbouring countries, including by strengthening procedures for and mechanisms to coordinate the implementation of such arrangements, with a view to improving prevention of the offences covered under the Optional Protocol and detection, investigation, prosecution and punishment of those responsible for any such offences.**

## IX. Follow-up and dissemination

33. **The Committee recommends that the State party take all appropriate measures to ensure full implementation of the present recommendations, inter alia by transmitting them to the relevant government ministries, the Parliament, and national and local authorities for appropriate consideration and further action.**

34. **The Committee recommends that the report and written replies submitted by the State party and the present concluding observations be made widely available, including (but not exclusively) through the Internet, to the public at large, civil society**

**organizations, youth groups, professional groups and children, in order to generate awareness of and debate concerning the Optional Protocol, its implementation and monitoring thereof.**

## X. Next report

35. **In accordance with article 12 (2) of the Optional Protocol, the Committee requests the State party to include further information on the implementation of the Optional Protocol and the present concluding observations in its next periodic report, to be submitted in accordance with article 44 of the Convention.**